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election
10/16/02

Attorney Docket No. NZK-128-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant : FUJII ET AL.
Serial No. : 09/899,863 Group Art Unit: 1648
Filed : July 5, 2001 Examiner: U. WINKLER
Title : NEF-ATTACHABLE, PROTEIN, DNA ENCODING THE
PROTEIN AND A MONOCLONAL ANTIBODY AGAINST
SAID PROTEIN

ELECTION IN RESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

In response to the Restriction Requirement dated September 6, 2002, Applicants respectfully elect Group I (Claims 1-3) with traverse.

Applicants maintain that the appropriate standard for restriction has not been applied. MPEP 808.01 states that where inventions are not connected by design, operation, or effect under the disclosure of the particular application, the inventions are independent. MPEP 808.01 also states that “[t]his situation, except for species, is but rarely presented, since persons will seldom file an application containing disclosures of independent things” (emphasis added). MPEP 806.04, which was relied upon by the Examiner in making the restriction requirement, gives an example of two independent inventions: (1) an article of apparel such as a *shoe*, and (2) a *locomotive bearing*. Clearly, this is not the situation regarding the subject matter of Groups I-III.

ELECTION IN RESPONSE TO RESTRICTION REQUIREMENT

I. RESTRICTION BETWEEN GROUPS I AND II

Group I (Claims 1-3) is directed to a protein. Group II (Claims 9-11 and 18-19) is directed to a monoclonal antibody and a pharmaceutical composition. Claim 9 of Group II is directed to a monoclonal antibody against the protein according to Claim 1. Claim 18 of Group II is directed to an anti-Nef-attachable protein monoclonal antibody. The protein of Group I and the antibodies of Group II are capable of use together. Thus, Groups I and II are related and are not independent.

II. RESTRICTION BETWEEN GROUPS I AND III

Group I (Claims 1-3) is directed to a protein. Group III (Claims 12-17 and 20-25) is directed chimeric antibodies, human type antibodies, and pharmaceutical agents containing the antibodies.

The chimeric antibody of Claim 12 and human type antibody of Claim 15 variously depend from Claim 9 (Group II), which recites a monoclonal antibody against the protein according to Claim 1. Similarly, the chimeric antibody of Claim 20 and the human type antibody of Claim 21 variously depend from Claim 18 (Group II), which recites an anti-Nef-attachable protein monoclonal antibody. The protein of Group I and the antibodies and pharmaceutical agents of Group III are capable of use together. Thus, Groups I and III are related and are not independent.

III. RESTRICTION BETWEEN GROUPS I AND IV-VI

Groups IV-VI use the protein of Claim 1 and are all related to AIDS treatment. As noted in the specification, the protein of Claim 1 can be used to obtain a monoclonal antibody, which can be used as a therapeutic agent for AIDS. Thus, the protein of Group I and the antibodies of Group II are related to the methods of Groups IV-VI. Further,

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Applicants reserve the right to request rejoinder of Groups IV-VI later during prosecution.

IV. CONCLUSION

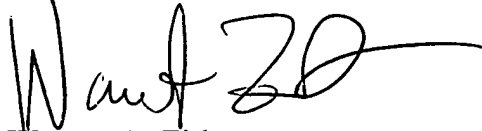
Applicants respectfully request that Groups I-VI be examined together because the inventions are related and to avoid duplicative examination and costs.

A Submission of Formal Drawings is filed concurrently herewith.

If there are any questions regarding this Election or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application.

If there are any discrepancies in the fees, please charge or credit our Deposit Account No. 501032 (Docket No. NZK-128-1).

Respectfully submitted,

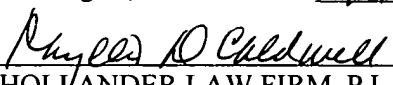


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October 7, 2002

<p align="center">CERTIFICATE OF MAILING</p> <p>I hereby certify that this correspondence dated <u>10/7/02</u> is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on <u>10/7/02</u>.</p> <p> HOLLANDER LAW FIRM, P.L.C. Suite 305 10300 Eaton Place Fairfax, Virginia 22030</p> <p>Date: <u>10/7/02</u></p>
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